



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,210	01/16/2002	Jeffrey T. Mannion	11578-006001	9085

26161 7590 12/10/2003

FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
----------	--------------

3634

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/052,210

Applicant(s)

MANNION ET AL.

Examiner

Jennifer E. Novosad

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 10, 12, 14, 15, 28, 29, 31, 32 and 68-101 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 10, 12, 14, 15, 28, 29, 31, 32 and 68-101 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 May 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 22, 5, 6, and 7 6) ☐ Other: _____

DETAILED ACTION

Election/Restriction

Applicant's election without traverse of Species (x), i.e., Figures 22 and 22A, in Paper No. 10 is acknowledged. All claims present in this application, i.e., claims 1-3, 10, 12, 14, 15, 68-81; 28, 29, 31, 32, 82-87; 88-94; 95-98; and 99-101, read on the elected species. *Currently*, no claims are deemed to be generic, i.e., readable on all species.

It is noted that claims 4-9, 11, 13, 16-27, 30, and 33-67 have been canceled by the amendment filed with the election on November 3, 2003 (Paper No. 10).

Priority

This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. A statement reading "This is a *** of Application No. ***, filed ***." should be entered following the title of the invention or as the first sentence of the specification. Also, the current status of all nonprovisional parent applications referenced should be included.

Drawings

The drawings filed on May 8, 2002 (Paper No. 4) are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: (a) 234, as on page 21, line 28, (b) 313, as on page 23, line 23, (c) 317, as on page 23, line 29, (d) 400, as on page 24, line 23, (e) 406', as on page 24, line 25, and (f) 82, as on

Art Unit: 3634

page 25, line 8. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to because the specification lacks reference to Figure 16E, e.g., at page 10, line 1, and Figure 32A, e.g., at page 11, line 26. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Abstract

Applicant is reminded of the proper language and format for an abstract of the disclosure. The form and legal phraseology often used in patent claims, such as "means" and "said", as in lines 4 and 12, should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

Specification

The disclosure is objected to because of the following informalities:

On page 6, line 24, "isa" should be changed to --is a --.

On page 7, line 15, "e.g." should be changed to --e.g.,--.

On page 21, line 31, "244from" should be changed to --244 from--.

On page 23, line 10, and page 24, line 2, there are two periods, i.e., "." at the end of the lines.

Appropriate correction is required.

Art Unit: 3634

Claim Objections

Claims 15, 32, 68, 71, 74, 75, 87, 94 and 97 are objected to because of the following informalities:

In line 3 of claim 15, it appears that "a" before "support" should be changed to --the--.

The preamble of claims 32, 68, 74, 75, and 87 is not consistent with that of claims 1 and 28.

In line 2 of claim 71, it is suggested that --a-- be inserted before "V-shape".

In line 1 of claim 87, "82wherein" should be changed to --82 wherein--.

In line 2 of claim 94, it appears that --the-- should be inserted before "suspender".

In line 1 of claim 97, "claim96" should be changed to --claim 96--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 10, 12, 14, 15, 68-81; 28, 29, 31, 32, 82-87; 89, 92-94; 95-98 and 99-101 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 28 are rendered indefinite since the structural relationship between the elements, i.e., the ring portion and the suspending element, is unclear. *Further*, claim 28 is also rendered indefinite since the recitation "from a region" is vague.

Art Unit: 3634

Claim 12 recites the limitation "said rim portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 14 recites the limitation "its as-formed relaxed position" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 28 recites the limitation "the orientation" in line 15. There is insufficient antecedent basis for this limitation in the claim. *Further*, the language of the limitations "located to suspend" in line 14 and "so suspended" in line 15 render the claim indefinite since this language makes it unclear whether the claim is positively setting forth that the container be suspended or whether the container be capable of being suspended. Note also the language of claim 93.

Claims 68, 69, and 70 recite the limitation "the package". There is insufficient antecedent basis for this limitation in the claims. It is noted that claim 1 sets forth a "container". *Further*, it is noted that claim 1 functionally sets forth one container and claims 69 and 70 seek to recite numerous "packages".

Claim 70 recites the limitations "said rods" in line 2, "said rod" in line 3, and "said other rod" in line 4. There is insufficient antecedent basis for these limitations in the claim.

Claim 72 recites the limitation "the display" in line 2. There is insufficient antecedent basis for this limitation in the claim.

The term "wide" in claim 74 is a relative term which renders the claim indefinite. The term "wide" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Art Unit: 3634

Claim 75 is rendered indefinite since the language of the recitation "is greater than two inch minimum horizontal dimension" is awkward thereby making it unclear what is being set forth. *Further*, there is insufficient antecedent basis for the limitation "the horizontal cross-section" in line 2 of the claim.

Claims 76 and 83 are rendered indefinite since the structural relationship between the elements is unclear.

Claims 81 and 87 recite the limitation "at least one of the contents" in line 2. There is insufficient antecedent basis for this limitation in the claims. *Further*, the recitation "may be" renders the claim indefinite since what "may be" to one "may not be" to another and hence the metes and bounds of the claim cannot be properly ascertained.

Claim 89 recites the limitation "said engagement" in line 2. There is insufficient antecedent basis for this limitation in the claim. *Further*, the recitation "in the vicinity" is vague and/or indefinite.

Claim 92 recites the limitation "said ring". There is insufficient antecedent basis for this limitation in the claim.

The limitation "as formed" in claim 94 renders the claim indefinite since it is unclear what is meant by this phrase.

The term "relatively short" in claim 95 is a relative term which renders the claim indefinite. The term "relatively short" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. *Further*, the limitation "substantially greater" in line 3 renders the claim indefinite since the reference point is unclear.

Art Unit: 3634

Claim 97 recites the limitation "said root portion" in line 2. There is insufficient antecedent basis for this limitation in the claim.

The use of the language "in manner" in line 3 of claim 99 renders the claim indefinite. Note also claim 101 whereby the language of the claim is awkward.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Insomuch as the claims are best understood (in view of the Section 112 rejections, as advanced above), claims 28, 29, 31, 82, 84, 85; 88-90, and 92-94 are rejected under 35 U.S.C. 102(b) as being anticipated by Ingemann '231.

Ingemann '231 discloses a device for a container (10) *useful* to package contents whereby the container has a surrounding wall (at 11) extending from a bottom to a rim formation (at 13) at a top opening and the device defining a removable (the device (20) is removable from the container) suspension device, i.e., a suspender, with a ring portion (at 23) extending over and removably *engageable* with the rim formation (13) of the container (10); the device further comprising an inwardly positioned suspending element (at 50) integrally, i.e., once formed the elements are considered to be integral, extending from a region of the ring portion (23) located to allow the container to be suspended at a tilted orientation if the container is suspended in a rack; the suspending element further comprising an opening (in 51) through which a support *can be*

Art Unit: 3634

inserted; the suspender being of sheet form and being free-ended and being integrated with the structure (23) so that it is deflectable from an as-formed position (see Figure 5) to a raised position (see Figure 6); and a central panel (40 – see column , lines 23-25) made of foil, i.e., a film.

It is noted that the claims do not positively require that the container be suspended nor do the claims positively require that the container be suspended by the suspending element. *Thus*, Ingemann '231 is considered to be capable of allowing the container to be suspended and to be suspended from the suspending element when desired.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 10, 12, 14, 15, 73, 74, 75, 76-81; 32, 83, 86, 87; 91; **95-98**; and **99-101** are rejected under 35 U.S.C. 103(a) as being unpatentable over Ingemann '231, alone.

Ingemann '231 discloses the device as advanced above.

The claims differ from Ingemann '231 in requiring: (a) the suspending element to be flexible (claims 1, 3, 15, 32, 95, and 99); (b) the ring portion of the suspending device to be formed as a portion of a thermoplastic unit (claims 10 and 91); (c) the container wall to be flexible (claim 74); (d) the central panel to be paper (claims 77 and 83); (e) the central panel to carry printing (claims 80 and 86); (f) the central panel to be clear (claims 81 and 87); (g) the

Art Unit: 3634

container to have specific dimensions (claims 74 and 75); and (h) the suspending element to have certain dimensions (claims and 101).

With respect to (a) and (b), Although Ingemann '231 discloses the suspending device to be of a rigid plastic material (see column 4, lines 7-27), it would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device as a flexible thermoplastic device, for ease in economy and manufacture and ease in use.

With respect to (c), although Ingemann '231 does not disclose the container vbeing flexible, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided a container having a flexible wall, for ease in use while allowing for increased storage capabilities of the device.

With respect to (d), although Ingemann '231 does not disclose a central panel made from paper, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a central panel made from paper for increased protection to the contents of the package.

With respect to (e) and (f), although Ingemann '231 does not disclose a clear central panel or a central panel having printing, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a clear central panel or a central panel with printing for ease in identifying the container contents and ease to the consumer.

With respect to (g), although Ingemann '231 does not disclose the specific container required by the claims, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided such a container for ease in use.

Art Unit: 3634

With respect to (h), although Ingemann '231 does not disclose the specific dimensions of the suspending device, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided such a device for ease in manufacture and use.

Claims 68-72 rejected under 35 U.S.C. 103(a) as being unpatentable over Ingemann '231 as applied to claims 1-3, 10, 12, 14, 15, 73, 74, 75, 76-81; 32, 83, 86, 87, 91; 95-98; 99-101; 28, 29, 31, 82, 84, 85; 88-90, and 92-94 above, and further in view of Timberlake '045.

Ingemann '231 discloses the device as advanced above.

The claims differ from Ingemann '231 in requiring a display rack (claim 68) defining a horizontal rod (claim 69), two vertically aligned tiers of rods (claims 70 and 72), a rod in a V-shape having diverging sections (claims 71 and 72). It is noted that the claims do not positively require that the devices be suspended from a rack.

Timberlake '045 teaches a display rack defining a horizontal rod (at 15), two vertically aligned tiers of rods (at 7) whereby the rods are V-shaped (7, 9, and 8).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provided a rack so that the devices could be suspended thereby allowing for organizational capacity of the devices and ease to the consumer.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ramsey *et al.*, Shiffer *et al.*, Arfert *et al.*, Yoshida, and Robinson show various devices.

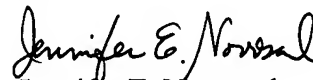
Art Unit: 3634

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872.

The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
December 1, 2003